

AMENDED IN SENATE APRIL 28, 2011

**SENATE BILL**

**No. 118**

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**Introduced by Senator Yee**

January 20, 2011

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An act to amend Section ~~4217.12~~ 4217.16 of the Government Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 118, as amended, Yee. Public contracts: energy service contracts: ~~competitive bidding requirements~~ *best value*.

Existing law requires public agencies to adhere to competitive bidding requirements and procedures when entering into public works contracts, subject to various exceptions based on the size and cost of the project, among other factors. One exception from these bidding requirements provides the authority for a public agency to enter into energy service contracts and related facility ground leases, as defined, ~~if the governing body makes a determination at a public hearing that specified cost savings and benefits of the project are in the public agency's best interests~~. *Existing law authorizes a public agency, prior to awarding or entering into an agreement or lease, to request proposals from qualified persons.*

~~This bill, on and after January 1, 2012, would authorize a public agency, notwithstanding any other law, to enter into an energy service contract and any necessarily related facility ground lease only if its contracting process is in accordance with competitive bidding requirements and procedures for public contracts, as specified~~ *would instead require the public agency to publish a request for information, qualification, or proposal pursuant to a public process determined by*

*the public agency, and would provide that the contract be awarded based on best value.*

*By imposing new duties on local public agencies, the bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 4217.16 of the Government Code is  
2     amended to read:

3     4217.16. Prior to awarding or entering into an agreement or  
4     lease, the public agency ~~may request~~ shall publish a request for  
5     information, qualification, or proposals from qualified persons  
6     pursuant to a public process determined by the public agency.  
7     After evaluating the proposals, the public agency may award the  
8     contract *that is of best value* on the basis of the experience of the  
9     contractor, the type of technology employed by the contractor, the  
10    cost to the ~~local~~ public agency, and any other relevant  
11    considerations. The public agency may utilize the pool of qualified  
12    energy service companies established pursuant to Section 388 of  
13    the Public Utilities Code and the procedures contained in that  
14    section in awarding the contract.

15    SEC. 2. *If the Commission on State Mandates determines that*  
16    *this act contains costs mandated by the state, reimbursement to*  
17    *local agencies and school districts for those costs shall be made*  
18    *pursuant to Part 7 (commencing with Section 17500) of Division*  
19    *4 of Title 2 of the Government Code.*

20    ~~SECTION 1. It is the intent of the Legislature to require public~~  
21    ~~agencies entering into energy service contracts that are subject to~~  
22    ~~Section 4217.12 of the Government Code to follow competitive~~  
23    ~~bidding procedures.~~

1     ~~SEC. 2.— Section 4217.12 of the Government Code is amended~~  
2     ~~to read:~~

3     ~~4217.12.— (a) Notwithstanding any other provision of law and~~  
4     ~~except as provided in subdivision (c), a public agency may enter~~  
5     ~~into an energy service contract and any necessarily related facility~~  
6     ~~ground lease on terms that its governing body determines are in~~  
7     ~~the best interests of the public agency if the determination is made~~  
8     ~~at a regularly scheduled public hearing, public notice of which is~~  
9     ~~given at least two weeks in advance, and if the governing body~~  
10    ~~finds:~~

11    ~~(1) That the anticipated cost to the public agency for thermal~~  
12    ~~or electrical energy or conservation services provided by the energy~~  
13    ~~conservation facility under the contract will be less than the~~  
14    ~~anticipated marginal cost to the public agency of thermal, electrical,~~  
15    ~~or other energy that would have been consumed by the public~~  
16    ~~agency in the absence of those purchases.~~

17    ~~(2) That the difference, if any, between the fair rental value for~~  
18    ~~the real property subject to the facility ground lease and the agreed~~  
19    ~~rent, is anticipated to be offset by below-market energy purchases~~  
20    ~~or other benefits provided under the energy service contract.~~

21    ~~(b) State agency heads may make findings pursuant to~~  
22    ~~subdivision (a) without holding a public hearing.~~

23    ~~(c) On and after January 1, 2012, notwithstanding any other~~  
24    ~~provision of law, a public agency may enter into an energy service~~  
25    ~~contract and any necessarily related facility ground lease only if~~  
26    ~~its contracting process is in accordance with the competitive~~  
27    ~~bidding requirements and procedures set forth in the Public~~  
28    ~~Contract Code.~~